

September 7, 2018

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VIA IZIS

Zoning Commission of the District of Columbia
441 4th Street, NW, Suite 200S
Washington, DC 20001

Re: Application No. 18-13 – 1530 1st St., SW (Square 0656, Lot 0053)
Applicant's Opposition to Party Status Request

Dear Members of the Zoning Commission:

On behalf of T.M. Jacob (the "Applicant"), please find enclosed the Applicant's Opposition to the Party Status Request, which was filed by Hosea McClain, Gazmyn McClain, Sylvia Carroll, and Geraldine McClain (the "Opposition") on September 6, 2018. The Opposition's Party Status Request will be heard by the Zoning Commission at an Advanced Party Status hearing held on October 22, 2018. The application is scheduled to be heard before the Commission on November 15, 2018.

Thank you for your attention to this matter.

Sincerely,
Cozen O'Connor



Meridith Moldenhauer

**BEFORE THE DISTRICT OF COLUMBIA
ZONING COMMISSION**

**APPLICATION OF
T.M. JACOB LLC**

**ZC APPLICATION NO. 18-13
HEARING DATE: NOVEMBER 15, 2018
ADVANCED PARTY STATUS DATE: OCTOBER 22, 2018**

**APPLICANT’S OPPOSITION TO PARTY STATUS REQUEST OF HOSEA MCCLAIN,
GAZMYN MCCLAIN, SYLVIA CARROLL, AND GERALDINE MCCLAIN**

The Applicant, T.M. Jacob, LLC (the “Applicant”), opposes the Request for Party Status filed by Hosea McClain, Gazmyn McClain, Sylvia Carroll, and Geraldine McClain (the “Opposition”).

The Applicant filed this design review case before the Zoning Commission to construct a new mixed-use building which will include 101 affordable residential units and approximately 7,698 feet of ground commercial space. Eighty percent of the dwelling units will be reserved for households with incomes not exceeding 50% of the area median income (“AMI”) and 20% of the units will be reserved for households with incomes not exceeding 30% AMI. As stated in the Applicant’s Application, the Project meets the objectives for Capitol Gateway zones and the District Comprehensive Plan. The Project is also consistent with the Buzzard Point Plan and its goals of revitalizing the area and creating additional mixed-income and affordable housing. The Project is also a companion to Z.C. 17-13, a similar affordable building that was approved by the Commission on October 30, 2017.¹

The Application was submitted on August 10, 2018. On September 6, 2018, the Opposition filed a Revised Party Status Request and it was served on the Applicant on the same day.² The Commission has scheduled an Advanced Party Status hearing for October 22, 2018. The Applicant will present the Project to the Zoning Commission on November 15, 2018.

The Applicant opposes the Opposition’s Request for Party Status because the Opposition has failed to meet the burden for party status. In order to be granted party status, the Opposition must demonstrate that its “interests would likely be more significantly, distinctively, or uniquely affected in character or kind by the proposed zoning action than those of other persons in the general public.” *See* 11 DCMR Subtitle Z § 404.14. The “interests” of a party that must be more

¹ Notably the Opposition resides within 200 feet of that development and they did not file a Request for Party Status in that case.

² It should be highlighted that the Opposition submitted statements dated June 30, 2018, eleven days after the Notice of Intent went out on June 19, 2018. The Application and Plans for design review by the Zoning Commission were not submitted until August 10, 2018.

affected than the general public include “environmental, economic, social, or other impacts.”
See 11 DCMR Subtitle Z § 404.1(h)(4).

Simply put, the Opposition fails to meet its burden to obtain party status as set forth in the zoning regulations. The Opposition relies on a blanket statement that they will be “uniquely impacted from this development’s air and noise pollution and any compounding effects.” The asserted “interests” of the Opposition are unsubstantiated non zoning-related ones, including the “toxic dust” from the “ongoing and unending development” construction, the “constant” flow of traffic, and the impact on air quality from the speculative offloading of diesel trucks.³ The Opposition’s request does not explain how the Opposition will be “more significantly, distinctively or uniquely affected” by the Project. Rather, the Opposition’s request refers to the “bad smoke” in the area from existing trucks and concedes that “all residents of Buzzard Point suffer from poor air quality.” To grant party status based on this scant showing would render meaningless the burden of proof set forth in § Z-404.1 and § Z-404.14.

In addition to the deficiencies noted above, the Request for Party Status fails to comply with the requirement of Subtitle Z § 404.1(g) concerning designation of witnesses. In order to be granted party status, the Opposition must provide a list of witnesses who will testify on the Opposition’s behalf as well as a written summary of each witness’s testimony and the profession in their initial filing. Here, the Opposition does not do so, and instead, notes that it has not yet identified expert witnesses, but that it plans to utilize expert witnesses and will notify all parties within two weeks of the November 15, 2018 hearing date regarding their expert witnesses. This promise by the Opposition does not fulfill the requirements of Subtitle Z § 404.1(g). The Applicant must be provided the names of witnesses along with their testimony in order to properly prepare for the hearing before the Zoning Commission on November 15th.

The Applicant requests 10-20 minutes at the October 22nd Advance Party Status hearing to provide a response to the Opposition’s Request for Party Status. In summation, the Applicant opposes the Opposition’s Request for Party Status, and requests that the Commission deny the Request for Party Status.

Respectfully Submitted,
Cozen O'Connor



Meridith H. Moldenhauer

³ Indeed, one of the Opposition, Gazmyn McClain, states that her “dog has had health issues since the Stadium project...”

CERTIFICATE OF SERVICE

I hereby certify that on September 7, 2018, I served a copy of this Opposition to Request for Party Status via email, to the following:

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